



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/991,913

11/26/2001

Marc-Andre Lefebvre

05725.0965-00

7542

22852

7590

05/15/2007

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP

901 NEW YORK AVENUE, NW  
WASHINGTON, DC 20001-4413

EXAMINER

DO, ANH HONG

ART UNIT

PAPER NUMBER

2624

MAIL DATE

DELIVERY MODE

05/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 09/991,913	Applicant(s) LEFEBVRE, MARC-ANDRE	
	Examiner ANH H. DO	Art Unit 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-132 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 59-128 is/are allowed.
- 6) ☒ Claim(s) 1-5, 12-14, 21-58 and 129-132 is/are rejected.
- 7) ☒ Claim(s) 6-11 and 15-20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-132 have been considered but are moot in view of the new ground(s) of rejection.

### ***Specification***

2. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
- (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
- (f) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (g) BRIEF SUMMARY OF THE INVENTION.
- (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (i) DETAILED DESCRIPTION OF THE INVENTION.
- (j) CLAIM OR CLAIMS (commencing on a separate sheet).
- (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 102***

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-5, 12-14, 21-26, 33, 35-38, 40-58, and 129-132 are rejected under 35 U.S.C. 102(a) as being anticipated by Kaminski et al. (U.S. Patent No. 5,640,957).

Regarding claim 1, Kaminski discloses a method comprising:

- obtaining first information representative of at least one condition of a first external body portion of a subject (Fig. 4 and col. 3, lines 21-23 and col. 4, lines 58-65: monochromators 12 and 14 for obtaining first information representative of untreated skin);

- obtaining first information representative of at least one condition of a second external body portion of a subject, wherein the second external body portion is normally less exposed to at one environment factor than the first external body portion (Fig. 4 and col. 3, lines 21-23 and col. 4, lines 58-65: monochromators 12 and 14 for obtaining first information representative of treated skin, wherein the treated skin is less exposed to the UV rays);

- determining the difference between the first information and the second information so as to enable an analysis into account impact of the at least one environment factor (col. 8, lines 36-45: comparing an amount of light filtered by the skin having the sunscreen thereon and an amount of light filtered by the skin not having the sunscreen and then transmitting from the spectral analyzer to a computer to enable an analysis into account impact of the UV rays).

Regarding claim 2, Kaminski teaches at least one condition comprises aging (col. 6, lines 63-67).

Regarding claims 3-5, Kaminski teaches enabling the subject to receive an indication of the difference between the first information and the second information (col. 8, lines 43-45: computer receiving results which inherently indicates the difference between the amount of light between untreated and treated skin).

Regarding claims 12, 21, 52 and 54, Kaminski teaches selecting treatment for the first external body portion based on the difference between the first information and the second information (col. 8, lines 43-45: based the results (i.e., the difference between the untreated and treated skin), the computer determines a level of protection given by sunscreen for treatment of the untreated skin).

Regarding claims 13, 129 and 130, Kaminski applies sunscreen product 34 to the untreated skin (col. 6, lines 27-28 and col. 8, line 31).

Regarding claims 14, 22 and 24, Kaminski teaches enabling the subject to receive information regarding the treatment for the first external body portion, and regarding a product (col. 2, lines 25-29).

Regarding claims 23, 51 and 57, Kaminski uses a computer network (Fig. 4: computer network 10).

Regarding claim 25, Kaminski teaches ultraviolet radiation (col. 3, lines 63-65).

Regarding claim 26, Kaminski teaches a plurality of environment factors (col. 7, lines 12-15: additional factors).

Regarding claims 33 and 35, Kaminski teaches a quantitative measurement of the at least one condition (col. 8, lines 36-45: comparing an amount of light filtered by the skin having the sunscreen thereon and an amount of light filtered by the skin not having the sunscreen).

Regarding claims 36-38, Kaminski teaches scanned image (col. 3, lines 41-43).

Regarding claims 40, 44, 45, 48 and 50, Kaminski teaches determining the difference between one property from analyzing one image of the first external body portion and one property from analyzing one image of the second external body portion (col. 8, lines 36-45: comparing an amount of light filtered by the skin having the sunscreen thereon and an amount of light filtered by the skin not having the sunscreen).

Regarding claims 41 and 49, Kaminski teaches acquiring at least one external body portion sample (Fig. 4 and col. 3, lines 21-23 and col. 4, lines 58-65: monochromators 12 and 14 for acquiring skin portion sample).

Regarding claim 42, Kaminski teaches living cells inherently including skin cells (col. 4, lines 7-9).

Regarding claim 43, Kaminski teaches absorption technique (col. 4, lines 15-18).

Regarding claim 46, Kaminski teaches an optical analysis technique (col. 3, lines 9-17).

Regarding claim 47, Kaminski teaches ultraviolet observation technique (col. 3, lines 43-48).

Regarding claims 53, 55 and 56, Kaminski teaches a computer 46 (Fig. 4) for storing the subject information (col. 7, lines 16-20).

Regarding claim 58, Kaminski teaches a computer 46 (Fig. 4) inherently including a graphical display.

Regarding claims 131 and 132, Kaminski teaches that the determining of the difference between the first information and the second information provides information about product (col. 8, lines 36-45: comparing an amount of light filtered by the skin having the sunscreen thereon and an amount of light filtered by the skin not having the sunscreen and then transmitting from the spectral analyzer to a computer so as to provide about sunscreen).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 27-32, 34, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaminski (U.S. Patent No. 5,640,957) in view of Robinson et al. (U.S. Patent No. 6,492,326).

Regarding claim 27, Kaminski discloses the first external body portion and the second external body portion (Fig. 4 and col. 3, lines 21-23 and col. 4, lines 58-65: monochromators 12 and 14 for obtaining first information representative of untreated skin portion and treated skin portion).

Kaminski does not expressly teach the skin portions located on the subject's face and arms.

Robinson discloses the external body portions located on the subject's face and arms (col. 35, lines 17-20).

Kaminski & Robinson are combinable because they are from skin care method.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to locate the external body portion of the subject on face and arms in Kaminski as taught by Robinson.

The suggestion/motivation for doing so would have been to improve the body's natural ability to protect against harmful radiation (Kaminski, col. 2, lines 11-15).

Therefore, it would have been obvious to combine Kaminski with Robinson to obtain the invention as specified in claim 27.

Regarding claim 28, Robinson teaches hair and skin located on the scalp and in the public area (i.e., the hands or legs) of the subject (col. 35, lines 17-20).

Regarding claims 29, 31 and 32, Robinson teaches fingernail and toenail (col. 35, lines 17-20).

Regarding claim 30, Robinson teaches portions of the hair on the subject scalp (col. 35, lines 17-20).

Regarding claim 34, Robinson teaches skin layer thickness (col. 4, lines 13-15).

Regarding claim 39, Robinson teaches counting sweat glands (col. 3, lines 45-47).



***Allowable Subject Matter***

6. Claims 59-128 are allowed.
7. Claims 6-11 and 15-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
8. The following is a statement of reasons for the indication of allowable subject matter:

Regarding independent claim 59, the prior art, taken either singly or in combination, does not teach:

- obtaining third information... is initialed; determining a difference between the third information and the second information; comparing the difference between the first information and the second information with the difference between the third information... the treatment of the first external body portion.

Regarding claims 60-80, since these claims depend from claim 59, they are also allowable for the same reason.

Regarding independent claim 81, the prior art, taken either singly or in combination, does not teach:

- obtaining fourth information... is initialed; determining a difference between the third information and the fourth information; comparing... the treatment of the first external body portion.

Regarding claims 82-128, since these claims depend from claim 81, they are also allowable for the same reason.

Regarding claim 6, the prior art, taken either singly or in combination, does not teach:

- obtaining third information... after the first time; and determining a difference... the second information.

Regarding claims 7 and 8, since these claims depend from claim 6, they are also objected for the same reason.

Regarding claim 9, the prior art, taken either singly or in combination, does not teach:

- obtaining third information... a second time; obtaining fourth information... after the first time; and determining a difference between the third information and the fourth information.

Regarding claims 10 and 11, since these claims depend from claim 9, they are also objected for the same reason.

Regarding claim 15, the prior art, taken either singly or in combination, does not teach:

- obtaining third information... is initialed; and determining a difference... the second information.

Regarding claims 16 and 17, since these claims depend from claim 15, they are also objected for the same reason.

Regarding claim 18, the prior art, taken either singly or in combination, does not teach:

- obtaining third information... a second time; obtaining fourth information... is initialed; and determining a difference between the third information and the fourth information.

Regarding claims 19 and 20, since these claims depend from claim 18, they are also objected for the same reason.


### ***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH H. DO whose telephone number is 571-272-7433. The examiner can normally be reached on 5/4-9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 14, 2007

  
**ANH HONG DO**  
**PRIMARY EXAMINER**